

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DHR 05412

COUNTY OF BUNCOMBE

CAROLINA OUTREACH, LLC,

Petitioner,

v.

SMOKY MOUNTAIN CENTER LOCAL
MANAGEMENT ENTITY/ MANAGED CARE)
ORGANIZATION, *as legally authorized*)
contractor of and agent for N.C.)
DEPARTMENT OF HEALTH AND HUMAN)
SERVICES,)

Respondent.

**SETTLEMENT AGREEMENT AND
MUTUAL RELEASE**

This Settlement Agreement and Release (“Agreement”) is made and entered into effective as of the date of execution by and between Petitioner Carolina Outreach, LLC (hereinafter “Petitioner” or “Carolina Outreach”), and Respondent Smoky Mountain LME/MCO (hereinafter “Respondent” or “Smoky”). The foregoing are at times referred to herein collectively as “Parties” and individually as a “Party.”

WITNESSETH:

WHEREAS, Smoky is a Local Management Entity/Managed Care Organization (“LME/MCO”) as defined at N.C. Gen. Stat. § 122C-3(20c) and is responsible for management and oversight of all publicly-funded mental health, intellectual/developmental disabilities, and substance use/addiction (“MH/IDD/SA”) services in the following North Carolina counties: Alexander, Alleghany, Ashe, Avery, Buncombe, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, Wilkes and Yancey Counties (“Smoky’s Catchment Area”); and

WHEREAS, Carolina Outreach is a provider of mental health and behavioral health services with its principal place of business in Durham, North Carolina. Carolina Outreach assists consumers, including Medicaid recipients, at home, in school, and in the community to prevent, overcome, and manage functional deficits caused by mental health issues, substance use/addiction disorders, and developmental delays. Carolina Outreach has offices in Asheville, Durham, Raleigh, Clayton, Pittsboro, Fayetteville, Wilson, Goldsboro, Kinston, and Smithfield, North Carolina; and

WHEREAS, Carolina Outreach entered into a contract with Smoky for the delivery of

MH/IDD/SA services, including but not limited to, Intensive In-Home (“IIH”) Services effective from July 1, 2014 through June 30, 2015 (the “FY14–15 Contract”); and

WHEREAS, Smoky provided written notice to Carolina Outreach on May 27, 2015 that Smoky had decided not to renew the provision of IIH Services in Carolina Outreach’s upcoming FY15-16 Contract after December 31, 2015, and further advising that no further referrals for IIH Services would be made to Carolina Outreach after October 31, 2015 (“the May 27, 2015 Notice”). Carolina Outreach contends that the May 27, 2015 Notice terminates Carolina Outreach’s right to participate in the IIH program for Smoky consumers; and

WHEREAS, Carolina Outreach executed a Contract with Smoky effective July 1, 2015 through June 30, 2016, which does not include the provision of IIH to Smoky consumers after January 1, 2016 (“the FY15–16 Contract”), and reserved its rights at that time to challenge the May 27, 2015 Notice; and

WHEREAS, Carolina Outreach filed a Petition for Contested Case Hearing with the NC Office of Administrative Hearings against Smoky on July 24, 2015, challenging the May 27, 2015 Notice; and

WHEREAS, Smoky initiated two postpayment reviews on Carolina Outreach, one preceding the May 27, 2015 Notice and one succeeding the May 27, 2015 Notice; and

WHEREAS, on June 18, 2015, Smoky sent Carolina Outreach a Notice of Overpayment (Reference #1410150080BBMP) (“the June 18, 2015 Overpayment Notice”); and

WHEREAS, Carolina Outreach timely requested reconsideration of the June 18, 2015 Overpayment Notice, and a reconsideration review was held on August 25, 2015; and

WHEREAS, on August 28, 2015, Smoky issued its Notice of Decision with regard to the June 18, 2015 Overpayment Notice, modifying the alleged overpayment amount from \$90,628.20 to \$63,259.00 (“August 28, 2015 Decision”); and

WHEREAS, Carolina Outreach has expressed its intent to appeal the August 28, 2015 Notice of Decision to the NC Office of Administrative Hearings; and

WHEREAS, on August 19, 2015, Smoky sent Carolina Outreach a Notice of Overpayment (Reference 20150701_OUTREACH_PI), alleging a total overpayment of \$336,733.36 (“the August 19, 2015 Overpayment Notice”); and

WHEREAS, on September 3, 2015, Carolina Outreach timely requested reconsideration of the August 19, 2015 Overpayment Notice, but a reconsideration review has not yet been held; and

WHEREAS, the Parties desire to compromise and settle any and all existing, known, and

potential disputes, claims, or rights between them, as set forth above; and

WHEREAS, the Parties have reached a compromise settlement resolving the differences between them on the disputes and potential disputes described herein, the terms and conditions of which are set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises and covenants hereinafter set forth, for agreed upon consideration, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, for themselves and their predecessors, successors, managers, assigns, officers, directors, employees, and agents, agree as follows:

1. The settlement effected by this Agreement is a compromise of disputed claims, made to avoid the uncertainty and expense of potential litigation. The promises and terms agreed to herein are not to be construed as an admission of any alleged liability, illegal conduct, nonconformity, error, other deficiency or legal position on the part of any Party. Any such alleged liability, illegal conduct, nonconformity, error, or other deficiency is expressly denied by the respective Parties.

2. For purposes of this Agreement, the May 27, 2015 Notice, the June 18, 2015 Overpayment Notice, the August 28, 2015 Decision, and the August 19, 2015 Overpayment Notice shall collectively be referred to as the “Smoky Notices.”

3. Within five (5) business days of the complete execution of this Agreement by all Parties, Smoky will issue an Amendment to the FY15–16 Contract, extending the ability of Carolina Outreach to deliver IIH services from December 31, 2015 through June 30, 2016. Consistent with the manner in which Smoky previously notified other providers and other stakeholders of the May 27, 2015 Notice, Smoky will notify other providers and stakeholders that in order to ensure the appropriate transition of consumers, Carolina Outreach’s ability to deliver IIH services will be through June 30, 2016, after which time Carolina Outreach will no longer provide IIH services within the Smoky Provider Network. All referrals of new consumers for IIH services to Carolina Outreach will end no later than April 30, 2016. So long as Smoky meets the timeframes set forth in Paragraphs 4 and 5, Carolina Outreach agrees that it will not challenge the June 30, 2016 end date of the IIH portion of the contract at the Office of Administrative Hearings or any other forum. Nothing in this Agreement shall be construed to affect Carolina Outreach’s ability to deliver IIH to any consumer not managed by Smoky.

4. Between the date of execution of this Agreement and January 1, 2016, Carolina Outreach and Smoky agree to jointly and in good faith develop and create an implementation plan of the following services: (a) a continuum of services for children with co-occurring MH/SA and IDD diagnoses; and (b) service arrays targeted for children with Complex Trauma and children in recovery from or impacted by substance use/ addiction disorders. These services

will consist of specialized enhanced rate Outpatient Therapy that includes case management and skill-building functions and the development of behavior support plans using functional behavioral analysis; (b)(3) Child Respite Services; enhanced Comprehensive Clinical Assessments; and other services available through the Medicaid Early and Periodic Screening, Diagnosis and Treatment (EPSDT) benefit. These services will use evidence-based practices, including Trauma Focused Cognitive Behavioral Therapy (TFCBT), Parent Child Interaction Therapy (PCIT), Dialectical Behavior Therapy (DBT), Seven Challenges, Multi-Dimensional Family Therapy, Seeking Safety and Family Behavior Therapy, and other jointly agreed upon models. The parties will also jointly agree on the delivery of services for children diagnosed with Autism only and/or Autism with MH/SA, enhanced Therapeutic Foster Care Services for dually diagnosed children, and specialized therapy for children suffering eating disorders. The reimbursement rate for the services described in this Paragraph 4 will be based on the resources and expertise associated with the identified evidence-based practices and systems-based approaches. Smoky is responsible for final approval of the rates, entrance criteria, continued stay criteria, and outcome measures of such services and will submit the approved versions to Carolina Outreach no later than February 1, 2016.

5. Smoky will implement the services described in Paragraph 4 no later than March 31, 2016. Smoky will monitor all referrals of children for the services described in Paragraph 4 above, in order to ensure appropriate service utilization. Smoky will refer children with co-occurring diagnoses, Complex Trauma, and in recovery from substance use/addiction disorders to Carolina Outreach and will not withhold any appropriate referrals, but no specific number of referrals is guaranteed under this Agreement. Carolina Outreach agrees to accept all referrals made under this Agreement. Carolina Outreach agrees to comply with any and all Utilization Management requirements governing prior authorization for the specific services.

6. Smoky will not make any new referrals of consumers for IHH services to Carolina Outreach on or after April 30, 2016.

7. Carolina Outreach agrees to pay ONE-HUNDRED THOUSAND DOLLARS AND 0/00 CENTS (\$100,000.00) as set forth in the payment schedule attached hereto and incorporated herein as Exhibit A, in full compromise and settlement of the Smoky Notices. Petitioner owes no penalty or interest as long as it pays the agreed upon amount in accordance with the terms of this Agreement. All payments shall be made via wire transfer or in the form of a certified check or cashier's check payable to Smoky Mountain Center and delivered to the following address: 200 Ridgefield Court, Suite 206 Asheville, North Carolina 28806.

8. Smoky agrees to accept payment of ONE-HUNDRED THOUSAND DOLLARS AND 0/00 CENTS (\$100,000.00) as set forth in Exhibit A in full compromise and settlement of the Smoky Notices.

9. Smoky acknowledges that the alleged overpayments that were at issue are not based upon allegations by Smoky that Carolina Outreach engaged in fraud, willful misrepresentation, the filing of a false claim, or other illegal conduct.

10. Carolina Outreach acknowledges and agrees that, going forward from the date of this Agreement, all staff members will receive their required annual follow-up training at least once every 365 days.

11. Carolina Outreach acknowledges and agrees that, going forward from the date of this Agreement, all service notes for consumers will specifically identify the amount of time spent on billable activities versus activities that are non-billable as specified in the applicable service definition(s).

12. Smoky will act in good faith towards Carolina Outreach and in accordance with applicable federal and state laws, rules, and regulations with regard to any future procurement or provider network decisions. With regard to any future procurement or provider network decisions, Carolina Outreach shall be treated the same as any other provider that is in good standing with the LME/MCO. The issuance of the Smoky Notices, the facts alleged in the Smoky Notices, the underlying postpayment reviews, this Agreement, and the amount paid by Carolina Outreach as part of this settlement shall have no bearing on Carolina Outreach's status as a provider and the decisions made by Smoky regarding Carolina Outreach's status as a provider in Smoky's catchment area.

13. The issuance of the Smoky Notices, the facts alleged in the Smoky Notices, the underlying postpayment reviews (Reference #1410150080BBMP and Reference #20150701_OUTREACH_PI), this Agreement, and the amount paid by Carolina Outreach as part of this settlement will not be considered by Smoky as having any effect on Carolina Outreach's good standing with Smoky internally or in response to queries from the Centers for Medicare & Medicaid Services ("CMS"), NC Department of Health and Human Services ("DHHS"), its Division of Medical Assistance ("DMA"), the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, any other LME/MCO operating in North Carolina or any State Medicaid agency or Medicaid managed care organization in any state outside of North Carolina, so long as Carolina Outreach has complied or is complying with the provisions of this Agreement. For the purposes of any future enrollment, reenrollment, participation, credentialing, or re-credentialing applications submitted by Carolina Outreach to DHHS, DMA, or any LME/MCO in North Carolina, the Smoky Notices, and this Agreement and the amount paid by Carolina Outreach as part of this settlement will not be reflected as an amount owed to Smoky that has not been paid in full, or a violation of federal or state laws, rules, or regulations governing North Carolina's Medicaid Program, so long as Carolina Outreach has complied or is complying with the provisions of this Agreement.

14. The Parties agree that nothing in this Agreement should be construed to preclude Carolina Outreach from responding to future requests for services in Smoky's Catchment Area, including requests by Smoky directly and requests by other providers within the Smoky network for subcontracted services.

15. Smoky will not conduct any further audits, postpayment reviews, or investigations of Carolina Outreach, unless required to do so under the terms of Smoky's contract with the North Carolina Division of Medical Assistance in response to a credible allegation of fraud, waste, or abuse that is new and distinct from the facts alleged in any previous audits, investigations, or complaints, or in response to any complaint or grievance received by Smoky from a consumer, family member, community stakeholder, or other person, even if anonymous. Smoky is permitted to continue to perform routine and focused monitoring reviews as required under the terms of Smoky's contract with the Division of Medical Assistance to ensure appropriate quality of care.

16. Each Party hereby releases the other, its current and former officials, employees, agents, and representatives, from any and all liability and causes of action that have arisen or may arise out of the Smoky Notices and 15 DHR 05412.

17. The Parties acknowledge that nothing in this Agreement waives or affects any rights or obligations with respect to the Initial Request for Records sent by Smoky to Carolina Outreach on or around August 5, 2015.

18. Carolina Outreach agrees to dismiss with prejudice the Petition for Contested Case Hearing filed on July 24, 2015 (15 DHR 05412), no later than three (3) business days from the execution of this Agreement.

19. The Parties agree that neither they nor anyone acting on their behalf shall hereafter make any derogatory, disparaging, or critical statement about any Party to this Agreement about the nature or adequacy of any conduct attributable to the Parties or the claims and defenses related to this Agreement.

20. Each Party agrees that it will not disclose the terms of this Agreement to anyone (except to its attorneys, accountants, employees who need to know the terms of this Agreement in order to carry out their job responsibilities, corporate affiliates, parents, and subsidiaries, all of whom agree to abide by the disclosure restrictions set forth in this paragraph), except in response to a request from CMS or DHHS or a request made under the NC Public Records law.

21. The Parties will bear their own costs and fees, including all attorneys' fees.

22. This Agreement constitutes the entire understanding and agreement between the Parties with respect to the subject matter hereof, and there are no promises, understandings, or representations other than those set forth herein. This Agreement supersedes any and all other prior agreements and drafts regarding the subject matter hereof. This Agreement may not be amended or modified except by a writing signed by both of the Parties or their duly authorized representatives.

23. This Agreement shall be construed and governed according to the laws of the State of North Carolina. If any provisions of this Agreement are held to be invalid or

unenforceable by a court of competent jurisdiction, all other provisions shall nevertheless continue in full force and effect.

24. Each Party acknowledges that it has carefully read this Agreement, knows the contents thereof, and executes the Agreement voluntarily as its own act. Each Party further acknowledges that it has conferred to the extent that it has deemed appropriate with legal counsel regarding this Agreement prior to its execution.

25. This Agreement shall be executed in two counterparts via an electronic signature platform, each of which will be deemed an original.

26. The undersigned represent and warrant that they are authorized to enter into this Agreement on behalf of the Parties.

27. This Agreement is binding on the Parties' predecessors, successors, parents, subsidiaries, managers, affiliates, assigns, officers, directors, employees, agents, and contractors.

28. This Agreement shall be effective upon the complete execution by all Parties.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURES TO FOLLOW

This Settlement Agreement agreed and executed by the Parties hereto:

For Smoky Mountain LME/MCO

DocuSigned by:


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Brian Ingraham, CEO

10/30/2015

Date

For Provider, Carolina Outreach LLC

DocuSigned by:

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Tim Brooks
Co-Director

10/30/2015

Date

EXHIBIT A**Settlement Payment Schedule for Carolina Outreach, LLC**

Reference #1410150080BBMP and Reference 20150701_OUTREACH_PI
 August 19, 2015 Overpayment Notice
 August 28, 2015 Decision

Settlement Payment Date	Settlement Payment Amount
November 1, 2015	\$8,333.34
November 15, 2015	\$8,333.34
December 15, 2015	\$8,333.34
January 15, 2016	\$8,333.34
February 15, 2016	\$8,333.33
March 15, 2016	\$8,333.33
April 15, 2016	\$8,333.33
May 15, 2016	\$8,333.33
June 15, 2016	\$8,333.33
July 15, 2016	\$8,333.33
August 15, 2016	\$8,333.33
September 15, 2016	\$8,333.33
TOTAL	\$100,000.00